IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE NO. 227 OF 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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GUJARAT FERTILISERS - Applicant(s)
Versus
COMMISSIONER OF INCOME TAX - Opponent(s)

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Appearance :
MR. S.N. DIVATIA for Applicant(s).
MRS. MONA M. BHATT for MR. MANISH R. BHATT for Opponent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 31/07/2006

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

Mr.S.N.Divetia, learned Counsel for the

Assessee, and Mrs.Mona M. Bhatt, learned Counsel for the Revenue, are heard.

2. At the instance of the Assessee, the Tribunal has referred the following questions to this Court for our opinion :

> *"1. Whether on facts and in law, the Tribunal was justified in upholding the action u/s. 147(a) of the I.T. Act?*
>
> *2. Whether on facts and in law the Tribunal was right in treating the said cash credits as not genuine and sustaining the addition made of Rs.66,475/-?"*

2. We will take up the second question first as it was vehemently argued by the learned Counsel for the Assessee that the findings regarding the cash credit entries that those were not genuine, are perverse findings. The learned Counsel for the Assessee submitted that the basic burden to prove the source of money would be on the Assessee, but, he is not required to prove the sources of the source and as the Taxing Authorities and the Tribunal made an inquiry into the sources of the

source, i.e. source of the person, who deposited the money, the findings are perverse. In support of his submission, he has relied upon a Division Bench's judgement of this Court in the matter of ***Murlidhar Lahorimal vs. Commissioner of Income-Tax***, ***[2006] 280 I.T.R. 512***.

3. After going through the facts of the said case, we must immediately say that the facts of the said case were totally different. In the present case, the Assessing Officer when was making a fact finding inquiry, he examined some of the creditors and after a thorough cross examination, he was successful in obtaining the information from the witness that the witness, in fact, had no money with him, he was having certain agricultural lands and from the agricultural operations, he could hardly meet both the ends. Not only that, it is to be seen that a sum of Rs.22,500/- was deposited simply because the partner of the firm, namely, Yogeshbhai, came in contact with the said depositor, he did not charge any interest over it because the money was given in friendship and after receiving the same from the firm, he again gave it to Yogeshbhai, the partner. A dispassionate look to the facts and the conduct of the witness would provide that he was a cooked-up witness and was brought

before the Assessing Officer to save the skin of the original assessee, a partnership firm. We are unable to hold that the findings recorded by the Assessing Officer, Commissioner of Income-Tax (Appeals) and the Tribunal into the genuineness of the transaction, call for any interference.

4. So far as the first question is concerned, the learned Counsel for the Assessee submitted that before issuing a notice under Section-147(a) of the Income Tax Act, the Assessing Officer must be sure of the grounds available to him and he cannot be allowed to make a fishing inquiry. His submission is that simultaneous issue of notice to the firm, so also to the partner, not only would be bad, but, would show the mind of the Assessing Officer.

5. The argument, unfortunately, is in oblivion of the fact that the present is a matter where the firm is opposing the proceedings under Section-147(a) of the Income Tax Act, once the findings are recorded against the interest of the partnership firm that the entries were not genuine, then, that would be the end of the matter for the firm. Even for the partner, the Officer would be entitled to take an action in view of the

statements made by the witness.

6. Both the questions are answered in favour of the Revenue and against the Assessee. The Reference shall stand disposed of accordingly. No costs.

[***R.S.Garg, J.***]

[***M. R. Shah, J.***]

*kamlesh**